IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

ORDER

SB CIVIL WRIT PETITION NO.1367/1995
M/s Amit Enterprises & anr. V/s The State of Rajasthan & Ors.

Date of Order : : September 12, 2006

HON'BLE MR. JUSTICE P.S. ASOPA

Mr.Nitin Jain, for the petitioner.
Mr.R.B. Mathur, for the respondents.

By the instant writ petition, the petitioners have challenged the order dated 20.7.1994 passed by the Deputy Commissioner (Admn.) (Anti-Evasion) II, Commercial Taxes Department, Jaipur and consequential order dated 21.7.1994 of the Assistant Commercial Taxes Officer, Flying Squad-IV, Commercial Taxes Department, Jaipur.

The facts, in brief, of the case are that at the relevant time, petitioner was doing the business of plywood and allied products and he was a registered dealer under the Rajasthan Sales Tax Act as well as Central Sales Tax Act. The petitioner gave an order to M/s Delta Panel Products Private Ltd., Banga Nagar, 24-Parganas (S) West Bangal for sending Commercial Block Board as well as Commercial Plywood. The quantity of the Plywood and Block Board was mentioned in the bill and copies of the bill Nos.113 and 114 have been placed on record. When the Truck entered in the territory

of State of Rajasthan and passed through the Commercial Taxes Check Post Ucha Nangla, Bharatpur, form No.18 checked and seal of check post was put on it. On 28.6.1994, the Truck was again checked at Peetal Factory, Jhotwara, Jaipur and it was suspected that Plywood and Block Board are under valued. Thereafter, value of the goods were collected from the market and it was found that same is less than market value, therefore, proceedings under Section 23D read with Rule 63B of the Rajasthan Sales Tax Act, 1954 were initiated and a permission was sought from the office of the Deputy Commissioner (Admn.)(Anti Evasion) II, Commercial Taxes, Jaipur where opportunity was given to the petitioner. On two dates, petitioner had attended the proceedings and sought time. On the last date i.e. 20.7.1994, no one appeared, therefore, exparte order was passed and a permission was granted under Section 23D read with Rule 63B of the Rajasthan Sales Tax Act, 1954 for purchasing the said goods being under valued.

On 21.7.1994, the Assistant Commercial Taxes Officer passed an order of valuation of goods to the tune of Rs.1,25,173/- and after adding 10%, offer of Rs.1,37,690/- was made to the party for selling of the said goods, which were under valued. On refusal of the party, penalty of Rs.41,307/- was imposed on the enhanced value of goods i.e. Rs.1,37,690/-.

The submission of counsel for the petitioner is that petitioner was not given proper opportunity at the time of valuation of goods by the Deputy

Commissioner (Admn.) (Anti Evasion) II. He has further submitted that penalty of 30% imposed on Rs.1,37,690/- is illegal as it could have only been imposed on Rs.1,25,173/-.

The submission of Mr.Mathur, counsel for the respondents is that proper opportunity was given by the Deputy Commissioner (Admn.) (Anti Evasion), but the same was not availed as would be evident from mention of three dates i.e. 16.7.1994, 18.7.1994 and 20.7.1994 mentioned in the order dated 20.7.1994. Out of said three dates, on two dates adjournment was sought, but on the last and final date, no one appeared. Mr.Mathur has also submitted that alternative remedy is available to the petitioner against the impugned orders by way of filing appeal before the Deputy Commissioner (Appeals).

I have heard both counsel for the parties and further gone through the record of the case.

Before dealing with further submission of Mr.Jain, I would like to deal with the submission of availability of alternative remedy. The impugned orders were passed in the year 1994. The writ petition was filed in the year 1995 and surviving issue is only of penalty. The writ petition was admitted and remained pending for 11 years and has been further heard on merit also, therefore, it would not be proper to accept the submission of Mr.Mathur of alternative remedy in view of judgment of Supreme Court in case of **L.Hirday Narain V/s Income-Tax Officer, Bareilly – AIR 1997**

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As regard the submission of Mr. Nitin Jain of non-compliance of principle of natural justice, I am not convinced with as sufficient compliance of principle of natural justice was made and opportunity was not availed by the petitioner.

As regard submission of Mr.Jain that penalty amount has been wrongly calculated on the enhanced 10% price, appears to be correct as the amount which is to be considered for the purpose of penalty is the value of goods and not the enhanced offer made by the department.

In view of above, the writ petition is partly allowed. The impugned order dated 21.7.1994 is partly quashed. The penalty of 30% if calculated on the value of goods i.e. Rs.1,25,173/- then the same would be Rs.37551.90/-, therefore, the Department is directed to refund the difference of amount i.e. 41307-37551.90 = Rs. 3755.10/- to the petitioner within a period of three months.

(P.S. ASOPA) J.

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